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June 10, 2019

VIA CM/ECF

The Honorable Brian M. Cogan
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Mark Nordlicht, et al., No. 1:16-cr-00640-BMC

Dear Judge Cogan:

This letter is respectfully submitted in response to the Government's letter of earlier this afternoon. While the Government's letter is focused primarily on Mr. Nordlicht's defense case, there are two issues in that letter that require a response from us.

First, the government writes that it "expects to rest early tomorrow morning." This is revisionist history. The Government rested on Friday. As the Court will recall, we approached the sidebar three times to make sure that was clear. On the third trip up, Mr. Hein stated: "I would ask that the government be permitted to rest on Tuesday when [the jury] return[s]." Your Honor responded as follows: "No. They are going to rest now, subject to – I guess I phrased it in lay terms for the jury, but you're right, what you heard at the sidebar was you are resting now, subject to those few documents, so we can hear the Rule 29. That's what we are going to do." Tr. 6003:25-6004:4. The Court then instructed the jury that "the government has rested[.]" Tr. 6005:3.

The reason the Government has sought to alter the record is clear. On Friday, after alerting the defense to a very discrete group of documents it still wanted to put in the record – the SS&C account statements and certain third party payroll records – and assuring the defense that all it otherwise needed to do was to confirm that the documents it actually used with witnesses were all offered and received in evidence, last night the Government provided us with a list of 86 additional exhibits beyond the SS&C statements and payroll records – mostly emails – that it wanted to put in evidence. Incredibly, some of these very emails are what the Government cites to in its submission of last night opposing our Rule 29 and other motions; evidence that is NOT in the record.

This morning, I alerted the prosecutors that we objected to these new materials as the Government had rested. I further informed them that the defense stood by its agreement to allow the SS&C records to be received in evidence as well as certain payroll records for 2014, 2015 and 2016. It is clear that it was my communication with the Government that prompted this effort by the prosecution to pretend that it had not yet rested. That effort should be rejected.



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Second, the only other point we wish to raise is that we made it clear on the record on Friday that if the Nordlicht team did not fill the entire day tomorrow for any reason, we would be calling Agent Amato and Postal Inspector Jordan – tomorrow. I confirmed this with the prosecutors twice over the weekend. Accordingly, should the Levy defense commence tomorrow, our first two witnesses continue to be these case agents.

Respectfully submitted,

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